

# **ADOPTION AND CHILDREN (SCOTLAND) ACT 2007**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Chapter 2**

#### ***The Adoption Process***

#### ***Section 14 - Considerations applying to the exercise of powers***

62. This section places various duties on the court or adoption agency when coming to a decision in relation to the adoption of a child including a duty to ensure that the welfare of the child is the paramount consideration, and to ensure that an adoption order is granted only if there is no better alternative for the child.
63. By virtue of subsection (2), the court or adoption agency must consider all of the circumstances of the case before coming to a decision to place the child for adoption or to make an adoption order.
64. By virtue of subsection (3), when making a decision about whether or not to place a child for adoption or whether or not to make an adoption order, the court or adoption agency must have as its paramount consideration the best interests of the child throughout his or her life (including after childhood).
65. In addition to this overarching principle, under subsection (4) the court or adoption agency must, as far as is reasonably practicable, take into account a number of specific considerations. These are (a) the value of a stable family unit in the child's development; (b) the child's own ascertainable views regarding adoption (taking into account the age and maturity of the child); (c) the child's religious persuasion, racial origin and cultural and linguistic background; and (d) the likely effect on the child, throughout his or her life, of the making of the adoption order.
66. The requirements of paragraph (c) mean that a court or adoption agency must have regard to these factors when placing a child, but do not mean that a child cannot be placed with adopters of other religious persuasions, racial origins and cultural and linguistic backgrounds.
67. Subsection (5) places a duty on an adoption agency which is placing a child for adoption to have regard, so far as is reasonably practicable, to the views of the child's parents, guardians and other relatives. "Relative" is defined for the purposes of the Act in section 119(1).
68. In carrying out these duties an adoption agency has a further duty under subsection (6) to consider whether adoption is the best way to meet the interests of the child or whether there is a better alternative. If it considers that there is a better alternative it must not make arrangements for the adoption of the child (subsection (7)).

*These notes relate to the Adoption and Children (Scotland) Act  
2007 (asp 4) which received Royal Assent on 15 January 2007*

69. Subsection (8) provides that a child who is at least 12 years old will be presumed to be capable of expressing his or her views for the purposes of subsection (4)(b). This is without prejudice to the generality of that subsection and therefore allows the court or adoption agency to take into account the views of a child below that age.